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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,631	04/24/2001	Joshua Levine	103.001	5427

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EXAMINER	
HAQ, NAEEM U	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/841,631	LEVINE, JOSHUA
	Examiner	Art Unit
	Naeem Haq	3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 April 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2 and 3*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" in claims 13 and 14 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9, 13-15, and 19-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are not within the technological arts. Bowman requires non-trivial recitation of technology in the body of the claim language. In the present case, claims 1-9, 13-15, and 19-28 do not recite any technology in the body of the claims. Indeed the steps of these claims can be

performed by hand and do not require any technology whatsoever. *The claimed invention must utilize technology in a non-trivial manner (Ex parte Bowman, 61 USPQ2d, 1665,1671 (Bd. Pat. App. & Inter. 2001)).* Although Bowman is not precedential, it has been cited for its analysis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1-4, 6, 8-12, 16-23, and 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Garcia (US 6,272,474 B1).

Referring to claims 1, 16-21, and 26-28, Garcia teaches a method, apparatus, and medium for facilitating a display of investment information, comprising:

- determining an amount of shares bid associated with each of a plurality of bid prices for an investment (column 5, line 56 – column 6, line 15);
- determining an amount of shares offered associated with each of a plurality of ask prices for the investment (column 5, line 56 – column 6, line 15); and

- arranging for indications of the amounts of shares bid and the amounts of shares offered to be graphically displayed (column 5, line 56 – column 6, line 15).

Garcia does not teach that the graphical display provides an investor with a direct sense of market depth associated with the investment. However, the Examiner notes that this limitation is merely functional language that adds little to the patentability of the claim because it merely states the result of the steps of determining and arranging (see *Texas Instruments Inc. v. International Trade Commission, 26 USPQ2d 1018 (CAFC 1993)) and Minton v. National Association of Securities Dealers Inc., 67 USPQ2d 1614 (CAFC 2003)*). Furthermore, the Garcia reference provides a graphical display of bid and offered shares (Figures 1-6) and therefore allows someone to form an opinion of the data presented.

Referring to claim 2, Garcia teaches that the indication of the amounts of shares bid and the indication of the amounts of shares offered are graphically displayed on a single investment chart (Figures 1-6).

Referring to claim 3, Garcia teaches that the indications comprise bars on the investment chart (Figures 1, 3, 5, and 6).

Referring to claim 4, Garcia teaches the investment chart includes a first axis associated with share price and a second axis associated with a cumulative number of shares bid and offered (Figures 1, 3, 5, and 6).

Referring to claim 6, Garcia teaches the investment chart includes a first axis associated with share price, a second axis associated with a number of shares bid and offered, and third axis associated with time (Figures 1, 3, 5, and 6).

Referring to claims 8 and 9, Garcia teaches arranging for an indication of at least one previous trade to be graphically displayed (Figures 1-6), and that the investment is associated with a stock equity (Figures 1-6).

Referring to claims 10-12, Garcia teaches exchanging information with an information display device via a communication network, wherein the information display device comprises a personal computer, and that the communication network comprises the Internet (column 6, lines 30-43).

Referring to claims 22, 23, and 25, Garcia teaches that the plurality of bid prices are associated with a pre-determined range of bid prices relative to a maximum outstanding bid price, and the plurality of ask prices are associated with a pre-determined range of ask prices relative to a minimum outstanding ask price (column 5, lines 21-52)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5, 7, 13-15, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia (US 6,272,474 B1) in view of Official Notice.

Referring to claims 5, 7, and 24, Garcia does not teach that the first axis is associated with an average price, or that a plurality of investments are graphically displayed on the investment chart. However, Official Notice is taken that these features are old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate these features into the method of Garcia. One of ordinary skill in the art would have been motivated to do so in order to compare the moving averages of a plurality of stocks within an industry in order to exploit any trends that develop.

Referring to claims 13-15, Garcia does not teach determinations and updates are performed in substantially real-time based on information associated with investors, or that the bid prices and the ask prices comprise decimal values. However, Official Notice is taken that these features are old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate these features into the method of Garcia. One of ordinary skill in the art would have been motivated to do so in order to provide the traders with current market information and to reduce the spread between the bid and ask prices.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (703)-305-3930. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (703)-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Naeem Haq, Patent Examiner
Art Unit 3625

May 15, 2004

Jeffrey A. Smith
Primary Examiner